



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-1065]

RIN 1625-AA00

Safety Zone; Oregon Inlet, Dare County, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone on the navigable waters of Oregon Inlet in Dare County, North Carolina in support of demolition of the old Herbert C. Bonner Bridge. This temporary safety zone is intended to protect mariners, vessels, and demolition crews from the hazards associated with demolishing the old bridge, and will restrict vessel traffic on portions of Oregon Inlet near active demolition work and demolition equipment. This proposed rulemaking would prohibit vessels or persons from being in the safety zone. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-1065 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY

INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: (910) 772-2221, email: Matthew.I.Tyson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background, Purpose, and Legal Basis

On November 26, 2018, the North Carolina Department of Transportation provided the Coast Guard with details concerning the demolition of the old Herbert C. Bonner Bridge from February 1, 2019 through February 29, 2020. Demolition will not follow a set schedule due to sea conditions, equipment needs, and vessel navigation considerations. In addition, demolition will take place in two locations at once due to equipment types and demolition methods. A moving safety zone is proposed in Oregon Inlet within 100 yards of active demolition work and demolition equipment. Demolition work will take place at various points along the old Herbert C. Bonner Bridge, which follows a line beginning at approximate position 35°46'47"N., 75°32'41"W., then southeast to 35°46'37"N., 75°32'33"W., then southeast to 35°46'09"N., 75°31'59"W., then southeast to 35°46'03"N., 75°31'51"W., then southeast to 35°46'01"N., 75°31'40"W.

(NAD 1983) in Dare County, North Carolina. The Captain of the Port (COTP) North Carolina has determined that potential safety hazards associated with the demolition would be a concern for anyone transiting through Oregon Inlet.

The purpose of this rule is to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during the demolition of the old Herbert C. Bonner Bridge. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a moving safety zone to be enforced during active demolition work from February 1, 2019 through February 29, 2020. Demolition will not follow a set schedule due to sea conditions, equipment needs, and vessel navigation considerations. In addition, demolition will take place in two locations at once due to equipment types and demolition methods. When the safety zone is active, the exact times will be announced via Broadcast Notices to Mariners at least 48 hours prior to enforcement. The moving safety zone will include all navigable waters within 100 yards of active demolition work and demolition equipment in Oregon Inlet along the old Herbert C. Bonner Bridge, which follows a line beginning at approximate position 35°46'47"N., 75°32'41"W., then southeast to 35°46'37"N., 75°32'33"W., then southeast to 35°46'09"N., 75°31'59"W., then southeast to 35°46'03"N., 75°31'51"W., then southeast to 35°46'01"N., 75°31'40"W. (NAD 1983). This zone is intended to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during the demolition of the old Herbert C. Bonner Bridge. No vessel or person will be permitted to enter the safety zone during the designated times. There will be alternative

navigation options for vessel traffic when a moving safety zone covers all or part of the navigation channel. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the proposed safety zone. Vessel traffic will not be allowed to enter or transit portions of Oregon Inlet during active demolition work from February 1, 2019 through February 29, 2020. The specific enforcement times for active demolition work will be broadcast at least 48 hours in advance and vessels will be able to transit Oregon Inlet at all other times. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the safety zone. There will

be alternative navigation options for vessel traffic when a moving safety zone covers all or part of the navigation channel. Vessel traffic in this portion of Oregon Inlet will fluctuate between high, medium, and low depending on the time of the year. This rule does not allow vessels to request permission to enter the moving safety zone covering the active demolition areas within Oregon Inlet during the designated times.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or

governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a 100-yard radius moving safety zone lasting from February 1, 2019 through February 29, 2020 that would prohibit entry into a portion of Oregon Inlet for bridge demolition. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online

docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-1065 to read as follows:

§ 165.T05-1065 Safety Zone; Oregon Inlet, Dare County, NC.

(a) Location. The following area is a safety zone: all navigable waters of Oregon Inlet, within 100 yards of active demolition work and demolition equipment, along the old Herbert C. Bonner Bridge, which follows a line beginning at approximate position 35°46'47"N., 75°32'41"W., then southeast to 35°46'37"N., 75°32'33"W., then southeast to 35°46'09"N., 75°31'59"W., then southeast to 35°46'03"N., 75°31'51"W., then southeast to 35°46'01"N., 75°31'40"W. (NAD 1983) in Dare County, NC.

- (b) Definitions. As used in this section---

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Captain of the Port means the Commander, Sector North Carolina.

Demolition crews means persons and vessels involved in support of demolition.

(c) Regulations. (1) The general regulations governing safety zones in §165.23 apply to the area described in paragraph (a) of this section.

(2) With the exception of demolition crews, entry into or remaining in this safety zone is prohibited.

(3) All vessels within this safety zone when this section becomes effective must depart the zone immediately.

(4) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910-343-3882.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement Period. This regulation will be enforced from February 1, 2019 through February 29, 2020

(f) Public Notification. The Coast Guard will notify the public of the active enforcement times at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF-FM marine channel 16.

Dated: December 7, 2018

Bion B. Stewart,
Captain, U. S. Coast Guard
Captain of the Port North Carolina.
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